STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the Matter of	)	
	)	
Global NAPs, Inc.	)	
	)	
Petition for Arbitration Pursuant to Section 252(b) of The Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc. f/k/a GTE North Incorporated and Verizon South Inc. f/k/a GTE South Incorporated.	)	Docket No. 02-0253

REPLY BRIEF OF VERIZON NORTH INC. AND VERIZON SOUTH INC. TO THE PETITION FOR ARBITRATION OF GLOBAL NAPs, INC.

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Dated: August 5, 2002

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I. INTRODUCTION

GNAPs has not provided an adequate basis for the Commission to grant the relief it seeks. Nothing in its Petition, testimony, or Initial Brief, provides support to its arguments that Verizon is not entitled to the equitable allocation of financial responsibility for Verizon's increased transport obligation when GNAPs selects a single physical point of interconnection. Nor has GNAPs provided an adequate, fair, or workable alternative to using Verizon's local calling areas as the basis for reciprocal compensation. In addition, GNAPs has provided no legitimate evidence or arguments to cause this Commission to stray from its policy that Verizon is entitled to fair compensation for virtual NXX traffic. Therefore, the Commission should reject the interconnection agreement proposed by GNAPs because it is unsupported by the record, reflects GNAPs' inappropriate attempt to shift its business risks to Verizon, alters the existing law of intercarrier compensation, and ignores the Telecommunications Act of 1996 ("Act").[1]

GNAPs' proposals in this case are nothing more than attempts to obtain subsidies from Verizon. GNAPs argues that it is seeking to provide competitive choices to consumers, but it seeks to do so by relying on a free ride from Verizon. Throughout this proceeding, Verizon has proven that GNAPs intends to minimize its switching investment in Illinois and therefore increase its transport needs,[2] use Verizon's network to meet its increased transport needs without compensation, and freely use Verizon's network to transport traffic outside the zones historically treated as local calling areas. These proposals will not improve telecommunications services or benefit the citizens of Illinois.

[1] *See* U.S.C. § 251 *et seq.*

[2] GNAPs witness Lundquist admitted this plan during his testimony before Judge Gilbert. *See* June 11, 2002 Hearing Transcript ("Tr.") at 43-44.

In its Initial Brief, GNAPs again merely recycles its pleadings from other states and does not address the issues uniquely presented in this arbitration in Illinois. For example, GNAPs spends more than two pages of its Initial Brief disputing an argument that was not raised by Verizon in this proceeding.[3] GNAPs continuously states in its Initial Brief that "VNXX traffic is reciprocal compensation traffic,"[4] and yet it never addresses any of this Commission's numerous holdings to the contrary.[5] In another section of its Initial Brief, GNAPs merely recycles its prefiled testimony of its witness, Scott Lundquist, without addressing the myriad of cost issues raised at the hearing – as if those issues had never been raised.[6] GNAPs again repeats its mantra that economies of scale and scope affect its costs associated with provisioning its own transport while ignoring the real cost issue as identified during the hearing, which is *who* should pay for the transport – especially in light of the fact that Verizon has continuously offered to provision such transport at its cost-based rates to GNAPs.[7] The Commission should reject the interconnection agreement proposed by GNAPs. The above examples show that GNAPs has not presented support for its request to this Commission seeking subsidies from Verizon.

[3] GNAPs Initial Brief at 17-20. Verizon has not alleged that the Illinois universal service goals would be threatened by GNAPs' attempts to thwart the Commission's local calling area regime.

[4] *See, e.g.,* GNAPs Initial Brief at 17.

[5] *See, e.g., Global Naps, Inc., Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech,* Arbitration Decision, Docket No. 01-0786 (May 14, 2002) (*"Ameritech GNAPs"*).

[6] *See* GNAPs Initial Brief at 21-24.

[7] Notably, GNAPs does not address the admission of its own witness at the hearing that using Verizon's already-built network at incremental, cost-based rates would be much less expensive than building its own network. *See* June 11, 2002 Hearing Transcript ("Tr.") at 89-81.

II. DISCUSSION OF ISSUES

Issue 1: Verizon's Proposal Permits GNAPs To Physically Interconnect With Verizon At A Single Point On Verizon's Existing Network.

Verizon's virtual geographically relevant interconnection point ("VGRIP") proposal provides GNAPs interconnection "at any technically feasible point within" Verizon's network, as required by applicable law.[8] Pursuant to VGRIP, GNAPs may interconnect with Verizon's network at a single point in a LATA. GNAPs said nothing contrary to this point in its Initial Brief or during the hearing. In fact, the testimony of GNAPs' witness supports Verizon's proposal. In his direct testimony, Mr. Lundquist testified that the Act gives CLECs the right to "establish interconnection 'at any technically feasible point' ***on the ILEC's network***."[9] Despite the testimony of its own witness, GNAPs' proposal does not confine GNAPs' choice of POI to any technically feasible point on Verizon's network. Moreover, Lundquist could not articulate GNAPs' disagreement with Verizon's proposed language because, as he admitted, he is not familiar with the details of Verizon's proposal.[10] Therefore Verizon's language should be adopted, as it has been in other states.[11]

Issue 2: Verizon's VGRIP Proposal Equitably Allocates The Additional Transport Obligations Caused By GNAPs' Interconnection Decisions.

GNAPs' contract terms attempt to maximize use of Verizon's network for free in contravention of federal and state policies entitling carriers to be compensated for the use of their

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[8] *See* 47 U.S.C. § 251(c)(2)(B).

[9] Lundquist Direct Testimony at 6 (emphasis added).

[10] Tr. at 29.

[11] *See, e.g., In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Public Utilities Commission of Ohio Case No. 02-876-TP-ARB, Arbitration Panel Report (July 22, 2002) at 6-7 ("*Ohio Verizon GNAPs Arbitration Panel Report*"); *In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.*, Order, Docket No. 2002-66-C Order No. 2002-450, at 55, 58, South Carolina Public Service Commission (rel. June 12, 2002).

facilities. Commission precedent and sound public policy require GNAPs to shoulder financial responsibility for any decision to minimize its network investment and instead use Verizon's network for transport to and from its limited network.

To allocate equitably the additional transport obligations caused by GNAPs' potential selection of only one physical POI in a LATA, Verizon's VGRIP proposal differentiates between that physical POI – where the carriers physically exchange traffic – and a point on the network where financial responsibility for the call changes hands. Verizon refers to this demarcation of financial responsibility as the "Interconnection Point" or "IP." Once Verizon delivers traffic to GNAPs' financial demarcation point (the IP), Verizon proposes to make GNAPs financially responsible for delivery of this traffic in order to place at least a portion of the costs in the hands of the cost-causer, guaranteeing proper financial incentives in place to ensure fair competition.

In its Initial Brief, GNAPs asserts that from "the beginning of paid telephony, the party placing the call has been responsible for paying for the call."[12] That, of course, is not true. There are several instances, such as 800 services or collect calls, in which the calling party does not pay for the call. Indeed, GNAPs is essentially seeking to provide such a service without paying for it. GNAPs is seeking to give the originating party a free long distance call in the guise of a local call, with Verizon providing the free transport and then paying GNAPs for the privilege.[13] Moreover, GNAPs is not a traditional voice carrier and does not purport to be. GNAPs markets its services to customers that generally terminate far more traffic than they originate, are

[12] GNAPs Initial Brief at 20.

[13] GNAPs is relying on Verizon to subsidize free service to its customers. On its website, GNAPs' Chairman states, "I don't understand why all the RBOC's are rushing to get into the long distance market. After all, I keep telling them that all calls within the GNAPs network will be free." http://www.gnaps.com/chairman2.html (visited July 29, 2002).

centrally located in one area, and frequently collocate at GNAPs' facilities.[14] GNAPs' business plan and customer base in other jurisdictions demonstrate that the flow of traffic to GNAPs' single, distant POI will travel primarily in one direction – from Verizon to GNAPs.[15] Relying on the claim that "the originator of the call should pay" is preposterous in light of GNAPs admitted business plan where it will rarely originate a call.

Nevertheless, GNAPs claims that its proposal is fair because the additional costs Verizon would incur are "de minimus." As Verizon has demonstrated through its testimony and briefs, this is completely false. Incredibly, and despite the fact that at the hearing GNAPs' witness admitted he did not know what Verizon would charge GNAPs for this additional transport,[16] GNAPs now asserts in its Initial Brief – without any foundation whatsoever – that Verizon seeks to "impose excessive and discriminatory charges for this transport."[17]

GNAPs' transport analysis, moreover, is irrelevant. Even if the cost were minimal, which Verizon witnesses have explained is not true,[18] it nevertheless is a cost that GNAPs should have to factor into its business plan. Using Verizon's network for free is of course more cost effective for GNAPs than provisioning the transport itself, but it creates perverse incentives for GNAPs to place its POI such that GNAPs will incur little to no cost and Verizon's costs would be at their greatest. This is neither a fair nor an efficient method of constructing a network. Nor

[14] *See* D'Amico Direct at 6-7, 9-10; *see also* http://www.gnaps.com/CO-locationpage.html (visited July 26, 2002) (offering collocation to potential customers).

[15] *See* D'Amico Direct at 6-7.

[16] Tr. at 73-76.

[17] GNAPs Initial Brief at 24-25.

[18] Verizon witness Kevin Collins explained the fatal flaw with GNAPs' calculation of costs during the hearing. *See* Tr. at 108-121.

is it advantageous for Verizon ratepayers who will bear the costs that GNAPs' customers will avoid.

GNAPs again in its Initial Brief erroneously tries to frame the issue here as a choice between an alleged "de minimus" cost to Verizon for transporting a GNAPs call to a distant POI versus the hypothetical cost of GNAPs building an entire network and transporting the call itself. The relevant comparison, however, does not contemplate Verizon's costs in transporting versus GNAPs building an entire network. The relevant comparison contemplates merely whether the costs of additional transport will be paid by Verizon, or whether that such "de minimus" cost will be paid by GNAPs. Indeed, GNAPs' witness admitted that using Verizon's already-built network at incremental, cost-based rates would be much less expensive than building its own network.[19]

In addition, GNAPs touts the efficiency of its network, because it can rely on fewer switches and more transport. As Verizon has demonstrated, GNAPs wants to deploy a relatively small number of switches and, thereby, transport traffic over relatively greater distances.[20] This alleged "efficiency," however, depends on GNAPs obtaining a free ride on Verizon's network! Verizon should not be forced to subsidize GNAPs' local competition costs by providing transport free of charge. As Congress made clear, the ultimate goal of the Act is to promote facilities-based competition – not to have ILECs subsidize their competitors' entry into local markets.[21]

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[19] Tr. at 89-91. Additionally, as Verizon witness Kevin Collins testified, if GNAPs were to purchase this additional transport from Verizon, GNAPs would be able to "take full advantage of Verizon's scale [ ] economies," because Verizon's rates are based on its costs. Tr. at 123-24.

[20] Lundquist Direct at 12.

[21] *See* S. Conf. Rep. 230, 104th Cong., 2d Sess. 1 (1996).

In the *Local Competition Order*,[22] the FCC held that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection*, including a reasonable profit."[23] The FCC explained further that, "because competing carriers *must usually compensate incumbent LECs for the additional costs incurred* by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect."[24] Relying on this discussion in the *Local Competition Order*, the FCC has argued in court that, "consistent with the *FCC Order*," an incumbent LEC may "obtain additional compensation if a specific request for interconnection warrants it," and noted that the Oregon Public Utility Commission, in the decision under review in that case, had so provided.[25] Verizon's VGRIP proposal similarly enables Verizon to receive compensation if GNAPs makes interconnection choices that, as demonstrated above, are expensive in that they require Verizon to bear costs that it would not otherwise incur and for which it is not compensated.

[22] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") (subsequent history omitted).

[23] *Local Competition Order* ¶ 199 (emphasis added).

[24] *Id*. ¶ 209 (emphasis added).

[25] Memorandum of the Federal Communications Commission as Amicus Curiae at 22 & n.17, *U S WEST Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc.*, No. CV 97-1575 JE (D. Or. filed Aug. 16, 1998) ("FCC Amicus Brief"). The Oregon PUC found that "a reasonable argument can be made that additional compensation should be required of a carrier that seeks to interconnect in a manner that is extremely inefficient" and held that U S WEST would be permitted to demonstrate that it should be entitled to such compensation based on the actual POIs requested. *See* Order No. 97-003, *In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996*, ARB 3 *et al*. (Or. PUC Jan. 6, 1997).

Contrary to GNAPs' assertion, the *Virginia Order*[26] is by no means a "mandate" from the FCC to this Commission.[27] First, it should be noted this is a decision rendered by the Wireline Competition Bureau (the "Bureau") standing in the stead of the Virginia State Corporation Commission.[28] Its decision is neither entitled to the deference normally accorded to a federal agency's interpretation of a statute that it administers nor in any way binding on this Commission.[29]

Second, the Bureau's decision fails to address or to distinguish relevant FCC decisions, which favor Verizon's position. To start, the order never addresses the FCC's holding in the *Local Competition Order*, that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[30] As described above, the FCC has relied on this very passage in arguing that an incumbent LEC may "obtain additional compensation if a specific request for interconnection warrants it."[31] The Bureau's failure, in the *Virginia Order*, to address paragraph 199 and the FCC's prior interpretation of that paragraph is especially noteworthy, because the Bureau found that "Verizon raises serious concerns about the

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[26] Memorandum Order and Opinion, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Expedited Arbitration*, CC Docket No. 00-218; *Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Arbitration*, CC Docket No. 00-249; *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket No. 00-218, DA 02-1731 (Re. July 17, 2002) (*"Virginia Order"*).

[27] See GNAPs Initial Brief at 11.

[28] *Virginia Order* at 4, ¶ 1.

[29] *See Caiola v. Carroll*, 851 F.2d 395, 399 (D.C. Cir. 1988) (refusing to defer when interpretation rendered by official who was "*not* the head of the agency").

[30] *Local Competition Order* ¶ 199.

[31] FCC Amicus Brief at 22.

apportionment of costs caused by a competitive LEC's choice of points of interconnection."[32] Accordingly, under a proper understanding of the FCC's rules implementing federal law, the Bureau should have permitted Verizon to recover those costs.

Third, GNAPs conspicuously stops short in its extensive quote of the *Virginia Order*.[33] Not surprisingly, GNAPs omits the section where the Bureau concurs with Verizon's concerns about transporting CLEC traffic to distant points of interconnection.[34]

In fact, nothing in the *Virginia Order* prohibits application of Verizon's VGRIP proposals. The Bureau did not even do what it said it was doing – applying current FCC rules and precedents. Instead, the Bureau ignored relevant FCC decisions that require CLECs to bear the costs resulting from their interconnection choices.

Lastly, GNAPs has not addressed many of the arguments raised by Verizon, including the Illinois statutory arguments presented by Verizon, first in its Response to GNAPs' Petition, and again in its Post Hearing brief. It would be wholly inappropriate for GNAPs to be heard now if it chooses to respond to Verizon's positions for the first time in GNAPs' reply brief.[35]

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[32] *Virginia Order* at 27, ¶ 54. The Bureau similarly fails to address the FCC's statement that, "because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect." *Local Competition Order* ¶ 209.

[33] GNAPs Initial Brief at 12-13.

[34] *Virginia Order* at 27 (stating, "Verizon raises serious concerns about the apportionment of costs caused by a competitive LEC's choice of points of interconnection, such as, for example, the apportionment of costs for virtual FX traffic transported to distant points of interconnection.").

[35] *Compare* Illinois Supreme Court Rule 341(g) which requires that a reply brief "shall be confined strictly to replying to arguments presented in the brief of the appellee." 145 Ill.2d R. 341(g). Moreover, Illinois courts maintain that issues raised for the first time in a reply brief do not merit consideration on appeal. *Britamco Underwriters, Inc. v. J.O.C. Enterprises, Inc.*, 623 N.E.2d 1036 (Ill. App.3d 1993).

Issue 3: **Verizon's Interconnection Agreement Permits GNAPs To Define Its Local Calling Areas For GNAPs' Customers.**

GNAPs' ***retail*** calling areas may include whatever geographic area it deems appropriate. What GNAPs cannot do, however, is circumvent the existing access charge regime to its benefit through its own unilateral definition of "local calling areas." As GNAPs' testimony made clear, it proposes to ignore the Commission's historic determinations delineating what traffic will be subject to access charges. According to GNAPs, its decision of what to charge its retail end-users, rather than this Commission's determinations, dictates the distinction between traffic subject to reciprocal compensation and traffic subject to access charges. GNAPs' proposal would make the same call subject to reciprocal compensation when GNAPs originates the call but subject to access charges when Verizon originates the call. This scheme is neither fair nor practical, and it "would also cause confusion in the area of intercarrier compensation."[36]

GNAPs again asserts in its Initial Brief that the distinction between "local" and "toll" calls, is economically and technologically artificial.[37] GNAPs' argument is premised on its faulty assertion that distance is irrelevant to the cost of transporting traffic.[38] Even assuming, *arguendo*, that GNAPs is correct, it is immaterial to the issue of intercarrier compensation. It is the role of this Commission, not GNAPs, to determine local calling areas and the cost of transport for telecommunications in Illinois. While GNAPs may point to two states which have

[36] *Ameritech GNAPs* at 12.

[37] GNAPs Initial Brief at 39; *see also* GNAPs' Petition at 18 ¶ 42. It is worth noting that GNAPs in its briefs and testimony continues to tout the "explosion" of telecommunications technology over the last decade and yet remains conspicuously silent on the "implosion" of the vast majority of companies whose technologies on which the industry relied to bring down the cost of telecommunications.

[38] Ironically, GNAPs' own witness ***relies*** on distance in establishing his theories on the costs associated with transport. As GNAPs' witness Lundquist asserted at the hearing, his "cost calculation eventually arrives at a [sic] cost per mile per minute." Tr. at 79.

adopted LATA-wide local calling areas,[39] there remain 48 states in the Union (most importantly, Illinois), which have not. A two-party arbitration proceeding is certainly not the appropriate forum to implement a total shift in intercarrier compensation and rating policy for all carriers doing business in Illinois.

Issue 4: **If GNAPs Wishes To Use A Virtual NXX Arrangement To Mimic Other Toll-Free Calling Services, GNAPs Is Not Entitled To Receive Reciprocal Compensation For This Arrangement, And Should Provide Verizon Fair Compensation For The Use Of Verizon's Network In Providing Such A Service.**

GNAPs asks the Commission to sanction its plan to misassign NXX codes to customers in Illinois that are not associated with the exchange to which a code is homed. Additionally, GNAPs wants the Commission to treat "virtual NXX" calls as local for purposes of reciprocal compensation.[40] This Commission has repeatedly rejected this proposition, and the Commission should do so again here.[41] Most recently, in the *Essex Telecom* decision, this Commission concluded that "non-ISP bound NXX traffic should be subject to a bill-and-keep regime."[42]

GNAPs' proposed use of virtual NXX assignments is a sham substitute for toll-free calling service. By assigning virtual NXX codes, GNAPs seeks to create a situation in which a Verizon end-user can call a GNAPs customer outside the Verizon end-user's local calling zone

[39] *See* GNAPs' Initial Brief at 39-40 (Florida and New York).

[40] *See* GNAPs' Petition at 22.

[41] *Essex Telecom, Inc. v. Gallatin River Communications, L.L.C.*, Docket No. 01-0427 (Ill. Comm. Comm'n July 24, 2002) ("non-ISP bound NXX traffic should be subject to a bill-and-keep regime) ("*Essex Telecom*"); *Ameritech GNAPs*; *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Arbitration Decision, Docket No. 00-0332 (Ill. Comm. Comm'n Aug. 30, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.") (*"Level 3 Arbitration*"); *TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech-Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Decision, Docket No. 01-0338 at 39 (Ill. Comm. Comm'n Aug. 8, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation").

[42] *Essex Telecom* at 16.

without paying a toll charge. This forces Verizon to provide a toll call to its own customer without receiving compensation for the additional transport outside of the local calling area that the call requires.

First, it is important to note that the traffic at issue is not subject to reciprocal compensation. The underlying call is clearly an interexchange call, although the virtual NXX assignment prevents Verizon from assessing toll charges on its end-user placing the interexchange call. Because of the actual end points of the call, it is traffic that is exempted from reciprocal compensation under § 251(b)(5) of the Act as this Commission has repeatedly recognized.[43]

Most recently in the *Essex Telecom* case, this Commission held that VNXX traffic should be subject to a bill-and-keep regime.[44] While that solves the problem of GNAPs receiving reciprocal compensation for calls that Verizon must transport, it does not compensate Verizon for transporting a call outside of its local calling area. GNAPs, as the beneficiary of the transport, must either compensate Verizon for such transport, or not be allowed to misassign NXX codes such that Verizon's billing systems will be tricked into transporting the VNXX calls for free. Therefore, unless and until the Commission determines in a generic rulemaking that a different compensation regime should apply to VFX traffic, Verizon seeks access charges when GNAPs causes a call to be transported outside of Verizon's local calling area.

GNAPs' argument in its Initial Brief that Verizon is not losing toll revenues because a caller that cannot obtain a free VNXX number would either use a local number or not make the

[43] *See, e.g.*, *Essex Telecom* at 18, 25; *Ameritech* GNAPs at 15; *Level 3 Arbitration* at *7.

[44] *Essex Telecom* at 16.

call at all is also preposterous.[45] The entity that wants potential customers to be able to make free long distance calls to them should bear that cost as the cost of doing business and obtaining customers that are in disparate calling areas. Verizon should not be the entity to subsidize a business in Bloomington that wants customers in Macomb. Either that business or GNAPs as its provider should bear that cost, not Verizon.

GNAPs again cites to the *Virginia Order* for support of its pursuit to obtain free virtual NXX service without giving this Commission the full context of the Bureau's limited ruling. The Bureau accepted WorldCom's proposed virtual NXX language for use in its Virginia interconnection agreement, but it also noted that the "parties all agree that rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time."[46] In particular, the Bureau distinguished Verizon's tariffed FX service from the free-ride VNXX service like that sought by GNAPs:

> 287. Of particular importance to this issue is a comparison of the two sides' FX services. When Verizon provides FX service ("traditional FX"), it connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring toll charges. Verizon then assigns the FX subscriber a number associated with the distant switch. *By contrast, when the petitioners provide their virtual FX service, they rely on the larger serving areas of their switches to allow callers from a distant Verizon legacy rate center to reach the virtual FX subscriber without incurring toll charges. Thus, the petitioners simply assign the subscriber an NPA-NXX associated with the rate center the subscriber designates and rely on their switches' broad coverage,*

[45] GNAPs Initial Brief at 34.

[46] *Virginia Order* at ¶ 301. Verizon has already developed methods to measure traffic terminating to FX numbers.

> rather than a dedicated private line, to transport the calls between legacy rate centers.[47]

The Bureau's decision to permit free-ride VNXX was guided by the fact that in that case, Verizon had "alleged no abuse in Virginia of the process for assigning NPA-NXX codes."[48] When virtual NXX abuse does occur, however, the Bureau explicitly left it to state commissions to address such abuse:

> Additionally, we note that state commissions, through their numbering authority, can correct abuses of NPA-NXX allocations. As discussed earlier, the Maine Commission found that a competitive LEC there was receiving NPA-NXXs for legacy rate centers throughout the state of Maine although it served no customers in most of those rate centers. To the extent that Verizon sees equivalent abuses in Virginia, it can petition the Virginia Commission to review a competitive LEC's NPA-NXX allocations.[49]

In the Virginia matter, Verizon will be forced to return to the state commission in search of a resolution of future VNXX abuses. That need not be the case here, however, when the contract language proposed by Verizon will prevent such abuses. The Bureau explicitly states that it is within the states' realm of authority to ensure that such abuses do not occur. In fact, this Commission has already addressed the issue and is in the process of examining it further.[50]

Moreover, nothing in the *Virginia Order* requires this Commission to permit the misallocation of NXX codes in Illinois. Efficiency, finality, and fairness require that this

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[47] *Virginia Order* at 144, ¶ 288 (emphasis added).

[48] *Virginia Order* at ¶ 288.

[49] *Virginia Order* at ¶ 303.

[50] *See, e.g.*, *Essex Telecom* at 22, 25 (adopting the rationale of a Texas arbitration, which found that "FX traffic raised the same concerns regarding the opportunity for regulatory arbitrage"). Additionally, the Commission noted that it will have the opportunity to examine FX issues in Docket No. 01-0614. *Essex Telecom* at 25.

Commission not allow GNAPs to have the opportunity to abuse the allocation of NXX codes in Illinois.

Issue 5: **GNAPs Has Not Proposed A Specific Change-In-Law Provision For The *ISP Remand Order* Nor Do The Parties Need Such A Separate Provision.**

GNAPs still raises the issue of whether additional change-in-law language should be included in the agreement to specifically address changes to the *ISP Remand Order*[51] and yet GNAPs offers no contract provision for Verizon's or this Commission's consideration. The only applicable contract language GNAPs proposes is in Glossary § 2.75, where GNAPs inserts the phrase "unless Applicable Law determines that any of this traffic is local in nature and subject to Reciprocal Compensation." In light of the parties' agreed change-in-law provision and the FCC's move away from the use of the term "local" to describe traffic subject to reciprocal compensation, GNAPs' proposed addition to Glossary § 2.75 is unnecessary and inappropriate.

Issue 6: **The Commission Should Adopt Verizon's Proposed Language On Two-Way Trunking.**

GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection, but practical realities demand that the parties come to an understanding about the operational and engineering aspects of the two-way trunks between them. As was recently noted in an arbitration between GNAPs and Verizon in Ohio, "because two carriers are sending traffic over the same trunk from the two ends, the actions of one affects the other. For that reason, there must be a mutual agreement on the operational responsibilities and design parameters."[52] GNAPs has provided no evidence to support its contract language on this issue,

[51] *See* GNAPs' Initial Brief at 41; GNAPs Petition at 23.

[52] *Ohio GNAPs Verizon Arbitration Panel Report* at 13 (footnote omitted).

and therefore, this Commission should adopt Verizon's contract language with respect to two-way trunking.

Issue 7: **Verizon's References To Tariffs Establishes That Effective Tariffs Are The First Source For Applicable Prices While Ensuring That The Interconnection Agreement's Terms And Conditions Take Precedence Over Conflicting Tariffed Terms And Conditions.**

As is required by the regulated telecommunications industry, the interconnected carriers rely on the appropriate tariffs for applicable prices or rates. Contrary to GNAPs' assertion in its Initial Brief,[53] should a conflict arise between the *terms and conditions* of the tariff and those of the interconnection agreement, the terms and conditions in the interconnection agreement would preempt those contained in the tariff. Verizon's proposal ensures that *prices* are set and updated in a manner that complies with Commission guidelines and is efficient, consistent, and non-discriminatory to all CLECs. To cover situations, in which the price for a Verizon product or service is not contained in an appropriate tariff, Verizon's proposed agreement contains a price schedule which would apply.

This process is not "open-ended," as GNAPs again asserts.[54] Verizon's language provides for the appropriate interplay between tariffs and interconnection agreements in a manner that is fair and efficient, and more importantly, is overseen by this Commission. Additionally, the CLEC Handbook that GNAPs fears is provided by Verizon to facilitate the CLEC relationship. The Handbook provides resources for the CLEC in obtaining and maintaining interconnection with Verizon.[55] Moreover, because Verizon's proposal gives

[53] GNAPs Initial Brief at 44.

[54] GNAPs' Petition at 26; GNAPs Initial Brief at 43.

[55] The CLEC Handbook is easily accessible and maintained on Verizon's website. http://www22.verizon.com/wholesale/handbooks/toc/1,3989,c-1,00.html (visited July 25, 2002).

precedence to the terms and conditions of the interconnection agreement, GNAPs has no basis for concern that it may contradict the terms of the interconnection agreement. An arbitration panel in Ohio recently resolved this issue between Verizon and GNAPs. There, the panel ruled:

> The panel believes that Global's entitlement to certainty over the terms and conditions of the interconnection agreement is in no way compromised by Verizon's proposal to have tariffs incorporated by reference in various places throughout the parties' interconnection agreement. In the panel's opinion, an interconnection agreement can both incorporate by reference a tariff that is subject to change over time and also be the "the sole determinant of the rights and obligations of the parties to the greatest extent possible."
>
> * * *
>
> The panel is also persuaded by Verizon's argument that its proposed tariff references would eliminate what Verizon has described as the "arbitrage opportunity" that otherwise would be opened for Global and all other CLECs, i.e., to choose "frozen" rates from an interconnection agreement over any tariff rates and prices that might be subsequently established in accordance with the Commission's tariff approval process.[56]

Consistent with the authority cited previously by Verizon, the Commission should reject GNAPs' proposed deletions of tariff references in the interconnection agreement.

III. GENERAL TERMS AND CONDITIONS

Issue 8: Verizon's Insurance Requirements Reasonably Protect Its Network, Personnel, And Other Assets In The Event GNAPs Has Insufficient Resources.

GNAPs and Verizon operate in a highly volatile industry and in a society in which either party could be held jointly or severally liable for the negligent or wrongful acts of the other. Verizon seeks adequate protection of its network, personnel, and other assets in the event

[56] *Ohio GNAPs Verizon Arbitration Panel Report* at 16-17.

GNAPs has insufficient financial resources.[57] Verizon's proposed insurance requirements are reasonable in light of the risks for which the insurance is obtained and are consistent with what Verizon requires of other carriers and itself,[58] as set forth in its tariffs and sanctioned by this Commission.[59] As this Commission,[60] the FCC,[61] and other state commissions,[62] including the recent *Ohio GNAPs Verizon Arbitration Panel Report*,[63] have adopted similar insurance requirements to those Verizon proposes here, this Commission should again adopt Verizon's reasonable insurance requirements.

[57] In its Initial Brief, GNAPs inappropriately states that PacBell and Verizon are "similarly situated" in support of its argument. As PacBell does not do business in the state of Illinois, Verizon and PacBell are clearly not similarly situated, and therefore it is irrelevant whether PacBell accepted GNAPs' sparse insurance coverage. *See* GNAPs Initial Brief at 45.

[58] GNAPs wrongfully asserts that Verizon self-insures. GNAPs Initial Brief at 46. As Verizon witness Fleming testified, that is not the case. Fleming Direct at 3.

[59] *See* Verizon's Illinois Tariff for Local Network Access Services, Collocation Services, 7.1, Insurance. Effective May 30, 2001 Pursuant to the Order of the Illinois Commerce Commission in Docket Nos. 00-511/00-512.

[60] *Ameritech GNAPs* at 15-17.

[61] *Second Report* at ¶¶ 343-55 ("a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average . . .[of] 21.15 million"). The aggregate amount of insurance Verizon seeks from GNAPs fall below this measure of reasonability.

[62] *See Petition of AT&T Communications of New York, Inc. for Arbitration of an Interconnection Agreement with New York Telephone Company*, CASE 96-C-0723, New York Public Service Commission, 1997 N.Y. PUC LEXIS 360, (June 13, 1997; *accord Petition of NEXTLINK Pennsylvania, L.L.P. for Arbitration of an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc., Pursuant to the Telecommunications Act of 1996*, Docket No. A-310260F0002 (Interconnection Arbitration), Pennsylvania Public Utility Commission, 1998 Pa. PUC LEXIS 208, (May 22, 1998); *Petition of TCG Pittsburgh for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc.*, Docket No. A-310213F0002 (Interconnection Arbitration), Pennsylvania Public Utility Commission, 1996 Pa. PUC LEXIS 119, *30, *60-61, (September 6, 1996).

[63] *Ohio GNAPs Verizon Arbitration Panel Report* at 20 (noting that the "decision that PacBell apparently made in an otherwise unrelated case, to accept those same insurance requirements that Global has proposed here, should have very little, if any bearing on Verizon's own assessment of the level of insurance that should be considered sufficient to offset the increased risk and exposure to loss that Verizon (i.e., not PacBell) will face when the interconnection agreement under consideration in this case is consummated.") (parenthetical in original).

Issue 9: **Verizon's Audit Provisions Are Reasonable Because They Would Apply Equally To Both Parties And Would Be Conducted By A Third Party For A Limited Purpose.**

GNAPs' proposal completely eliminates either party's ability to evaluate the accuracy of the other's bills. GNAPs' opposition to Verizon's audit provisions is once again based on a misunderstanding – or misrepresentation to this Commission – of Verizon's proposal.[64] Contrary to the assertions GNAPs' Initial Brief, GNAPs would not be providing records to Verizon; instead the "audit shall be performed by independent certified public accountants" selected and paid by the Auditing Party.[65] Moreover, neither Verizon nor the auditing accountant would have access to all of GNAPs' records, rather, only those which are "necessary to assess the accuracy of the Audited Party's bills."[66]

The Public Utilities Commission of Ohio recently spoke to GNAPs' apparent misunderstanding of the auditing provisions when it held:

> Global has never explained why attributing to these commonly understood terms their ordinary meaning should bring into question the reasonableness of Verizon's proposed auditing provisions. Verizon has, in the panel's opinion, demonstrated several valid reasons why it should, as both a customer of Global and a nondiscriminatory supplier of its OSS to all carriers who wish to use it, be entitled to certain audit rights under the parties agreement: (1) to verify the accuracy of Global's bills; (2) to ensure that rates are being applied appropriately; and (3) to maintain the integrity of Verizon's OSS for the nondiscriminatory benefit of all carriers who use it, including Global.[67]

[64] The New York Commission ordered the GNAPs to adopt Verizon's proposed audit provisions observing that GNAPs "misconstrued the breadth of the audit provisions." *GNAPs NY Arbitration Order* at 19.

[65] Interconnection Attachment § 7.2.

[66] Verizon General Terms and Conditions Attachment § 7.3.

[67] *Ohio GNAPs Verizon Arbitration Panel Report* at 22-23.

For these reasons and those stated previously by Verizon in this matter, the Commission should adopt Verizon's language with respect to audit provisions.

Issue 10: Verizon Should Be Permitted To Collocate At GNAPs' Facilities In Order To Interconnect With GNAPs.

Verizon should have the option to collocate at GNAPs' facilities in order to interconnect with GNAPs if and when GNAPs deploys facilities in Illinois. Despite an opportunity to do so, GNAPs did not respond to this issue in its pre-filed direct testimony. GNAPs again ignores this issue in its Initial Brief. Nevertheless, GNAPs proposes edits which affect Verizon's ability to collocate. As nothing in the Act prohibits this Commission from allowing Verizon to interconnect with GNAPs via a collocation arrangement at its premises, it is the only way to ensure fair terms for interconnection between the parties, and it is the only way Verizon can evaluate whether it is more cost-effective to purchase transport from GNAPs or build its own facilities to GNAPs, this Commission should allow Verizon to obtain the "flexibility to establish efficient interconnection,"[68] and order inclusion of Verizon's proposed language in Interconnection Attachment § 2.1.5.

Issue 11: The Parties' Agreement Should Recognize Applicable Law.

GNAPs unreasonably proposes to delay implementation of a change of law until appeals are exhausted, even if the change of law is not subject to a stay.[69] This is unfounded and reflects GNAPs' true motive: to base Verizon's obligations on what GNAPs *wants* governing law to be, not what it actually is. If a change in law is effective, the parties' agreement must recognize it

[68] *GNAPs NY Arbitration Order* at 20.

[69] In § 4.7 of the General Terms and Conditions section, GNAPs proposes to add the underlined phrase: "Notwithstanding anything in this Agreement to the contrary, if, as a result of any final and non-appealable legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit. . . ."

rather than try to predict the result of further proceedings or substitute their judgment for that of a governmental decision-maker who chose not to grant a stay. Verizon is following applicable law by subsidizing the entry of CLECs like GNAPs into the marketplace. If the law changes, Verizon must have the right to cease providing a service or benefit if it is no longer required to so under applicable law.[70] Accordingly, and for reasons previously submitted to this Commission, the Commission should adopt Verizon's proposed General Terms and Conditions § 4.7.

Issue 12: GNAPs Should Only Be Permitted To Access UNEs That Have Been Ordered Unbundled Or Be Allowed Access To Verizon's Existing Network.

Again, GNAPs provides this Commission with no argument in support of its contract language on this issue. However, Verizon's proposed General Terms and Conditions § 42 is necessary to memorialize Verizon's right to upgrade and maintain its network, ensure that GNAPs does not force Verizon to unbundle its network absent a requirement to do so, and make GNAPs financially responsible for interconnecting with Verizon's network. Nothing in the Act requires Verizon's network to remain static simply because other carriers have chosen to interconnect with Verizon. In fact, denying Verizon the ability to upgrade and maintain its network jeopardizes service quality in Illinois and defeats the purpose of the Act to encourage the "rapid deployment of new telecommunications technology."[71] As other commissions have ruled, so should this Commission reject GNAPs' changes to Verizon's § 42 of the General Terms and Conditions section.[72]

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[70] *See GNAPs NY Arbitration Order* at 21-22; *Ohio GNAPs Verizon Arbitration Panel Report* at 25.

[71] Preamble to the Act.

[72] *GNAPs NY Arbitration Order* at 22; *In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.*, Reconsideration Order, Docket No. 2002-66-C Order No. 2002-482 at 10, South Carolina Public Service Commission (rel. June 21, 2002).

Issue 13: **When GNAPs Orders Trunks to Connect its Customers From its Switch Through Verizon's Tandem to the IXC That Subtends That Verizon Tandem, GNAPs Should Comply With Verizon's Ordering Requirements For Access Toll Connecting Trunks (Verizon Proposed Interconnection Agreement, Interconnection Attachment § 9.2).**

GNAPs has yet to set forth any rationale for its edits to this section despite having opportunities to do so in its pre-filed testimony and in its Initial Brief. As Verizon has demonstrated, access toll connecting trunk groups connect GNAPs' customers from its switch through Verizon's tandem to the IXC that chooses to connect to that tandem. Thus, the traffic that rides over these trunks is exchange access traffic. Section 9.2 describes the ordering process that GNAPs uses when it purchases access toll connecting trunks from Verizon. Verizon's access tariffs govern the provisioning of this service, and the references to Verizon's access tariffs are appropriate.

Issue 14: **GNAPs' Changes To The Definition Of "Trunk Side" Are Extraneous (Verizon Proposed Interconnection Agreement, Glossary § 2.95).**

There is no rational for GNAPs' edits to the definition of "Trunk Side." In its Petition, GNAPs alleged that the Commission can implement GNAPs' definition for "Trunk Side" by finding in GNAPs' favor on Issue 7. The changes GNAPs makes to this definition, however, are not related to GNAPs' ability to use two-way trunks, and therefore are wholly inappropriate here.

IV. DISPUTED CONTRACT LANGUAGE CITED BY GNAPS BUT UNRELATED TO ISSUES

Contrary to GNAPs' fleeting assertions, the Commission's resolution of the eleven "policy" issues GNAPs identified for arbitration will not dictate resolution of all the disputed contract language. As the Petitioner pursuant to § 252(b) of the Act, GNAPs was obligated to address both parties' positions with respect to unresolved issues. GNAPs has been provided several opportunities to do so. Therefore, consistent with applicable law and good policy, the Commission should adopt Verizon's contract proposals identified as disputed but unrelated to the

issues GNAPs raised for arbitration, as set forth in Verizon's Response and Initial Briefs in this arbitration.

V. CONCLUSION

As the FCC has explained, "viable, long-term competition among efficient providers of local exchange and exchange access services" requires that carriers compete "on the basis of the quality and efficiency of the services they provide, [not] on the basis of their ability to shift costs to other carriers."[73] Verizon has established that GNAPs' proposals here, most notably with respect to interconnection architecture and treatment of VNXX traffic, are intended to create regulatory arbitrage opportunities for GNAPs – in other words, to permit GNAPs to "compete" in Illinois merely by shifting costs to Verizon. To adopt GNAPs' proposals would discourage, not promote, competition on the merits.

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[73] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) at ¶ 71, *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("*ISP Remand Order*").

Verizon's contract proposals are reasonable and supported by law, sound public policy, and the record of this proceeding. Accordingly, the Commission should adopt Verizon's proposed contract language as noted in the Summary of Recommendations as set forth in Verizon's Initial Brief, Part II.

Dated: August 5, 2002

Respectfully submitted,

VERIZON NORTH INC. AND
VERIZON SOUTH INC.

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CERTIFICATE OF SERVICE

I, Michael Guerra, hereby certify that I served a copy of the Reply Brief of Verizon North Inc. and Verizon South Inc. to the Petition for Arbitration of Global NAPs, Inc. in Docket No. 02-0253 upon the service list by email on August 5, 2003.

Michael Guerra